

SENATE RECORD VOTE ANALYSIS

104th Congress
2nd Session

Vote No. 301

September 26, 1996, 3:53 pm
Page S-11389 Temp. Record

PARTIAL-BIRTH ABORTION BAN/Attempt to Override the Clinton Veto

SUBJECT: Partial-Birth Abortion Ban Act of 1995 . . . H.R. 1833. Passage, upon reconsideration, the objections of the President notwithstanding.

ACTION: VETO SUSTAINED, 57-41

SYNOPSIS: On November 1, 1995, the House voted 288-139, with 1 Member voting present, to pass H.R. 1833, the Partial-Birth Abortion Ban Act. On December 7, 1995, the Senate amended and passed the bill by a vote of 54-44 (see 104th Congress, first session, vote No. 596). The House then agreed to the Senate amendments on March 27, 1996, by a vote of 286-129, with 1 Member voting present. President Clinton vetoed the bill on April 10, 1996. On September 19, the House voted 285-137 to override his veto.

The Partial-Birth Abortion Ban Act will enact criminal and civil penalties for knowingly performing a partial-birth abortion, unless such an abortion "is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, provided that no other medical procedure would suffice for that purpose" (see 104th Congress, first session, vote No. 592). The term "partial-birth abortion" will be defined as an abortion "in which the person performing the abortion partially vaginally delivers the living fetus before killing the fetus and completing the delivery." A person who performs such an abortion may be fined and/or imprisoned for up to 2 years. The father, if married to the mother when she has a partial-birth abortion, and the maternal grandparents, if the mother is less than 18 years of age, will be permitted to seek civil relief unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion. Such relief will include money damages for all injuries, psychological and physical, and statutory damages equal to three times the cost of the partial-birth abortion. Only the person who performs the partial-birth abortion will be legally liable--a woman upon whom a partial-birth abortion is performed will not be subject to criminal or civil prosecution. Medical personnel who assist a person in the performance of a partial-birth abortion, and the operator of a medical facility in which such an abortion is performed, also will not be legally liable.

NOTE: A two-thirds vote of those Senators present and voting (66 in this case) is required to override a veto. At the end of the vote, Senator Lott switched his vote to nay for parliamentary reasons. Only a Senator who is on the prevailing side of a vote may

(See other side)

YEAS (58)			NAYS (40)			NOT VOTING (2)	
Republicans (46 or 90%)	Democrats (12 or 26%)		Republicans (5 or 10%)	Democrats (35 or 74%)		Republicans (2)	Democrats (0)
Abraham	Helms	Biden	Chafee	Akaka	Kennedy	Campbell- ³	
Ashcroft	Hutchison	Breaux	Jeffords	Baucus	Kerrey	Cohen- ²	
Bennett	Inhofe	Conrad	Kassebaum	Bingaman	Kerry		
Bond	Kempthorne	Dorgan	Simpson	Boxer	Kohl		
Brown	Kyl	Exon	Snowe	Bradley	Lautenberg		
Burns	Lott	Ford		Bryan	Levin		
Coats	Lugar	Heflin		Bumpers	Lieberman		
Cochran	Mack	Johnston		Byrd	Mikulski		
Coverdell	McCain	Leahy		Daschle	Moseley-Braun		
Craig	McConnell	Moynihan		Dodd	Murray		
D'Amato	Murkowski	Nunn		Feingold	Pell		
DeWine	Nickles	Reid		Feinstein	Pryor		
Domenici	Pressler			Glenn	Robb		
Faircloth	Roth			Graham	Rockefeller		
Frahm	Santorum			Harkin	Sarbanes		
Frist	Shelby			Hollings	Simon		
Gorton	Smith			Inouye	Wellstone		
Gramm	Specter				Wyden		
Grams	Stevens						
Grassley	Thomas						
Gregg	Thompson						
Hatch	Thurmond						
Hatfield	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

move to reconsider a vote. By voting nay, he preserved the option to have the Senate vote again on overriding the veto.

Those favoring overriding the President's veto contended:

Argument 1:

Congress passed the Partial-Birth Abortion Ban Act last year after holding comprehensive hearings in both Houses. It heard from medical and legal experts on this issue, and also heard compelling testimony from three women who had difficult, life-threatening pregnancies, two of whom had abortions (though not partial-birth abortions), and one of whom carried her child to term. The testimony and other evidence presented confirmed that partial-birth abortions are brutal, never necessary, dangerous to women, and constitutionally can and should be banned. One by one, the misrepresentations of supporters of this horrific procedure were refuted. Some Senators who label themselves "pro-choice" were blinded by those labels. Despite the overwhelming evidence that their arguments were invalid, and even dangerously false, they could not see the truth, and they voted against final passage in the Senate. President Clinton then vetoed the bill. Since that veto, the evidence has continued to accumulate against partial-birth abortions. Most of that evidence reinforces facts that were discovered in the earlier debate. The one new, and troubling, fact that has come to light is that the number of partial-birth abortions performed each year is much higher than originally thought.

In a partial-birth abortion, a woman's cervix is first dilated over 3 days in order to make the opening large enough for her to deliver the baby. The woman is given either general or local anesthetic. Local anesthetic does not reach her baby; a small amount of general anesthetic may, but not enough to deaden pain. The abortionist then turns the baby into the breech position in the womb (turning a baby in this manner poses grave dangers to a woman's health), grabs the baby's legs and pulls him or her through the birth canal. He delivers most of the baby from the mother, but stops with the head just inside her uterus. He holds the baby's head just inside the mother because if the baby's head is delivered, then that baby has full constitutional protection. In one second, if the baby's head is allowed to travel the 3 inches necessary to emerge totally from his or her mother, then the abortionist cannot legally perform the next, horrifying steps. With only the child's head still forcibly held within the mother, the abortionist takes a pair of scissors and cuts a hole in the back of the head. He then puts a catheter into the opening and suctions out the child's brains. Then, and only then, does he allow the head to emerge of this now dead baby.

But for the deliberate, forceful actions of abortionists in the final seconds of the 3-day procedure, partial-birth abortions would be a form of delivering premature babies. These abortions are performed from the 20th week of gestation right through the ninth month. With modern medicine, viability now begins at 23 weeks, and some infants have survived who have been born even earlier. The abortionist's actions at the end of the procedure prevent what the abortion industry calls the "complication" of a live birth. Throughout this debate, we have asked a very simple question of those Senators who continue to defend this horrible act: if the doctor makes a mistake, if he is distracted for a second and the baby's head emerges from the mother, should the doctor legally be allowed to murder that living baby by cutting open his or her head, without anesthetic, and then suctioning out his or her brains? No Senator has directly answered that question. We think 100 percent of Americans would say "no," but not one Senator opposing this bill has been able to give us that answer.

We are truly saddened that we even have to debate this issue with our colleagues. Whatever one's position is on abortion, one should admit the chilling inhumanity of this procedure. If Senators were to hear that the local humane society was going to destroy 100 puppies or kittens by cutting open the back of their heads, without anesthetic, and suctioning out their brains, they would be outraged, but, because we are talking about "abortion" and human babies many Senators are in denial. They are so ideologically committed to supporting abortion that they are blind to the facts. They are not deliberately dishonest--it is just that their pro-choice fanaticism makes them believe obvious falsehoods despite overwhelming evidence to the contrary. In the House, pro-life and pro-choice Members from both parties joined together to ban this procedure, and the American Medical Association's legislative review board unanimously endorsed it. In the Senate, though, we have found little willingness from pro-choice Members to face basic facts. Instead, they have continued to make claims that are demonstrably false.

Opponents of this bill do not like the term "partial-birth abortion," saying they do not think that it is precise. However, the definition of what is meant by this term is contained in the bill, and that definition is very specific. No matter how much Senators may wish to cloud the issue, they know exactly what is meant. Some Senators have complained that we did not say in the definition that the baby must be killed by the current method of cutting open the baby's head and suctioning out his or her brains. However, we could not put that in the definition, because the abortionist could then just stab the baby in the heart or use some other method to kill the baby before completing the delivery. Senators who oppose this bill may not like the honest term "partial-birth abortion," and they may not like the fact that we have described the horrific details which they would prefer to keep secret from the public, but they cannot change the basic facts that the purpose and scope of this bill are very clear and specific.

Another misrepresentation that has been widely spread by bill opponents is that the anesthesia given to the mother in a partial-birth abortion kills the baby before the abortion is even performed. Mary Campbell, the medical director of Planned Parenthood who testified at the Senate hearing on this bill, circulated a "fact" sheet claiming that anesthesia that is used is calculated by the "mother's weight, which is 50 to 100 times the weight of the fetus . . . This induces brain death in a fetus in a matter of minutes. Fetal demise

SEPTEMBER 26, 1996

VOTE NO. 301

therefore occurs at the beginning of the procedure while the fetus is still in the womb." Similarly, in a June 23, 1995 submission to the House Judiciary Constitution Subcommittee, the late Dr. McMahon (who admitted to performing partial-birth abortions) wrote that the anesthesia causes fetal demise. The Senate Judiciary Committee asked the American Society of Anesthesiologists if that claim had any truth to it. Dr. Norig Ellison, the president of the American Society of Anesthesiologists, responded that it had "absolutely no basis in scientific fact" and that he was "deeply concerned . . . that the widespread publicity given to Dr. McMahon's testimony may cause pregnant women to delay necessary and perhaps lifesaving medical procedures, totally unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the fetus." He further testified that regional anesthesia (used in many partial-birth abortions and most normal deliveries) has no effect on the fetus, and that general anesthesia has some minimal sedating effect, though it is doubtful that it provides any pain relief. Further, we know that after interviewing Drs. McMahon and Haskell (Dr. Haskell is another acknowledged partial-birth abortionist) American Medical News reported in 1993 that both had said that the "majority of fetuses aborted this way are alive until the end of the procedure."

Another claim that we have heard made is that babies at the stage of gestation at which partial-birth abortions are performed (from the 20th week through the ninth month) do not feel pain. This claim also is totally false. Professor Robert White, Director of the Division of Neurosurgery and Brain Research Laboratory at Case Western Reserve School of Medicine, testified before the House hearing that "The fetus within this time frame of gestation, 20 weeks and beyond, is fully capable of experiencing pain." On partial-birth abortions, he further stated that "Without question, all of this is a dreadfully painful experience for any infant subjected to such a surgical procedure." Similarly, Dr. Harlan Giles, a professor of high-risk obstetrics and perinatology who performs abortions by a variety of procedures, had the following to say of the procedure: "In my own personal opinion, particularly when there are other techniques available, that the introduction of a sharp instrument into the brain and sucking out the brain constitutes cruel and unusual fetal punishment."

Another myth that has been advanced by proponents of partial-birth abortions is that they are sometimes medically necessary to protect the health of the mothers, particularly when their babies have severe abnormalities. However, numerous doctors have testified that they are never necessary. Dr. Nancy Romer, for example, a practicing OB-GYN and clinical professor, stated that she has never had to resort to the procedure, nor have any of the 40 obstetricians in her department. Dr. Pamela Smith, the director of medical education in the department of obstetrics and gynecology at the Mount Sinai Medical Hospital Center in Chicago, similarly stated that a doctor would never have to resort to this procedure. For late-term abortions, there are always safer, more humane procedures.

This "health" argument has been concentrated on by a few Senators in this debate. They say now that they are against partial-birth abortions except for health and life-of-the-mother reasons. Repeatedly, they have suggested amending this bill to put in a health exception to go along with the life-of-the-mother exception it already has. However, they know as well as we do that no doctor who every performed a partial-birth abortion would say that it was not medically necessary, plus they know as well as we do that the Supreme Court, in *Doe v. Bolton*, has already said that the "health" conditions that must be protected in abortion include "all factors--physical, emotional, psychological, familial, and age--relevant to the well-being of the patient." Adding a "health" exception would make this bill meaningless. We remind our colleagues that the late Dr. McMahon, who admitted to performing partial-birth abortions through the ninth month of pregnancy, voluntarily submitted a list of 175 such abortions that he said he performed for "health" reasons, nearly one-quarter of which he said he performed for "depression." Our colleagues know that their proposal has no chance of being accepted; they also know that by making it they will be able to use it for political cover, as an excuse for supporting the President's veto.

The next claim advanced by proponents of the partial-birth abortion procedure is that if it is not necessary, at least sometimes it is the safest procedure. Again, the testimony and other evidence that has been gathered proves advocates of this procedure wrong. Dr. Warren Hern is the author of "Abortion Practice," which is the Nation's most widely used textbook on abortion standards and procedures. In an interview in the November 20, 1995 issue of the American Medical News, Dr. Herns stated that "I would dispute any statement that this is the safest procedure to use." Turning the fetus to a breach position is "potentially dangerous" because it may cause "amniotic fluid embolism or placental abruption." He also said, "You really can't defend it." Dr. Herns opposes the passage of this bill because he feels it is an attempt to chip away at the right to have an abortion, but he admits it is not a procedure that needs to be performed for safety reasons. Dr. Pamela Smith also testified as to the significant danger for the mother of this method of abortion. She testified that "partial-birth abortion is a perversion of a well-known technique used by obstetricians to deliver breech babies when the intent is to deliver the child alive . . . this technique is rarely used in this country because of the well known associated risk of maternal hemorrhage and uterine rupture." In a letter to Senator Smith, she also said that those women who were counseled that this procedure was the safest procedure for them were not told the truth. In her words, "Women who were 'counseled' by abortionists that they were submitting themselves to a procedure that was 'safe' and that would insure their future reproductive potential were deceived and lied to. These women actually risked losing their uterus or their lives by submitting to these dangerous intrauterine extractions."

Some Senators have suggested that this bill is unconstitutional because it does not provide a health exception. A few constitutional experts agree with them. However, most of the experts testified that the bill is fully constitutional, and their arguments were more persuasive. First, the bill in no way restricts the "right" to have a third-trimester abortion. The "right" that the Supreme Court found between the lines of the Constitution was never the right to terminate a pregnancy right up until the moment of birth in the cruelest,

most inhumane method imaginable. Second, it is likely that this method of "abortion" in which a child is brought four-fifths of the way out of his or her mother before he or she is killed eventually will be ruled to be infanticide, not abortion. We of course do not know what various judges may decide they think the Constitution means, but if they follow the Constitution and precedents instead of their own policy agendas, they will hold this bill to be constitutional.

The area that our colleagues have been least willing to face facts on is that most of these abortions that have been performed that have been acknowledged have been for purely "elective" reasons, meaning that both the mothers and babies have been perfectly healthy. On November 8, 1995, Dr Haskell stated under oath in Federal District Court in Ohio that most of his partial-birth abortions: "are elective in the 20-24 week range. In my particular case, probably 20 percent are for genetic reasons and the other 80 percent are purely elective." The other acknowledged partial-birth abortionist, Dr. McMahon, told the American Medical News in 1993 and Congress in 1995 that none of the abortions he performed were elective, but that 80 percent were "therapeutic." He then submitted a self-selected sample list to Congress of 175 of the "therapeutic" reasons he had performed partial-birth abortions, right through the ninth month. That list contained 39 abortions for "maternal depression" and 9 abortions because the baby had a cleft palate. Other abortions were performed because of "agoraphobia" (the fear of going outside), high blood pressure, diabetes, and because of "pediatric indications" (meaning that the girls were under 18 years old).

To defend this horrific practice, our colleagues have cited two of Dr. McMahon's former patients. These women both had pregnancies in which they found out in the third trimester that their babies had fatal birth defects. Both these women testified that Dr. McMahon told them that the only procedure that was safe for them was to have an intact dilation and evacuation (intact D&E; a euphemism for partial-birth abortion). However, these women also testified that their babies died in the womb, that their babies were not stabbed in the back of the head, that their baby's brains were not suctioned out, and that they would never have allowed that to happen. In other words, they had late-term abortions on the advice of Dr. McMahon, who said that it was impossible for them to have the live births that they wanted, but they emphatically did not have partial-birth abortions. Their babies were not dragged alive into the birth canal and then killed, which is precisely the procedure that this bill will ban. Their testimony was heartwrenching, but it was not relevant to this debate.

In the months since President Clinton issued his veto in favor of this horrific form of abortion-infanticide, new information has come to light strengthening the case for a ban. For instance, the Physician's Ad Hoc Coalition for Truth (PHACT), a group of over 300 doctors, mostly specialists in OB/GYN, maternal and fetal medicine, and pediatrics, and including Dr. C. Everett Koop, wrote the following: "Contrary to what abortion activists would have us believe, partial-birth abortion is never medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and fertility." The statement then detailed the nature of that threat, including: forcible dilation of the cervix over several days resulting in an "incompetent cervix" (the leading cause of premature deliveries); intentionally and dangerously causing a breech delivery; and risking injury to the mother by forcing the scissors into the child's head while it is still in her body. The PHACT physicians also deny that fetal abnormality would ever indicate partial-birth abortion: "In some cases, when vaginal delivery is not possible, a doctor performs a Caesarian section. But in no case is it necessary to partially deliver an infant through the vagina and then kill the infant." The most troubling new evidence that has come to light is that many more partial-birth abortions are committed each year than was originally thought. An extensive investigative report by the Sunday Record (9/15/96) in Bergen County, New Jersey, found that "Interviews with physicians who use the method reveal that in New Jersey alone, at least 1,500 partial-birth abortions are performed each year." That same article reported that "Another [New York] metropolitan area doctor who works outside New Jersey said he does about 260 post-20-week abortions a year, of which half are by intact D&E. The doctor, who is also a professor at two prestigious teaching hospitals, said he had been teaching intact D&E abortions since 1981, and he said he knows of two former students on Long Island and two in New York City who use the procedure." Opponents of this bill still say that "only" 600 partial-birth abortions are performed each year, but the evidence now indicates that many thousands are performed.

For this override of the Clinton veto to succeed, two-thirds of all Senators present and voting are going to have to vote in its favor. On the first vote, 54 Senators voted for the bill, and 44 Senators voted against it. We appeal to those 44 Senators--switch your votes. We know that Senator Moynihan, who is pro-choice and who did not vote on final passage last year, has said that he will vote to override because he views this procedure as infanticide, we know of a few other Senators who have said they will switch their votes now that they know more about partial-birth abortions, and we know of still other Senators who are considering changing their votes. Senator Campbell has announced that if he were here (he is absent for medical reasons) he would switch his vote to override the veto. No Senator who voted in favor of the bill before will vote against it now; clearly sentiment has shifted in favor of passing it.

Unfortunately, many Senators have privately told us that they want to vote to override this veto but they feel bound by their earlier votes and by their loyalty to President Clinton. President Clinton said he vetoed the bill because it is medically necessary in a "small number of compelling cases" (April 10), that it is needed to protect the mother from "serious injury to her health" (April 10), to avoid the mother's "losing the ability to ever bear further children" (May 23), and to protect women from being "eviscerated" or "ripped to shreds" (May 23). Each of these claims is totally false, as detailed above, and those Senators who want to support the President understand that a vote to override would publicly repudiate the President for making these false claims. It is always very difficult to admit being wrong, but these Senators now know that their earlier votes were wrong; it is always difficult to go against one's party's leader, but we hope these Senators will admit their mistake and vote in favor of the override instead of voting to protect the President.

SEPTEMBER 26, 1996

VOTE NO. 301

Brenda Shafer is a nurse who witnessed a partial-birth abortion performed by Dr. Haskell, which she described as follows: "I am a registered nurse with 13 years of experience. But one day in September 1993 my nursing agency assigned me to work at a Dayton, Ohio, abortion clinic, and I had often expressed strong pro-choice views to my two teenage daughters. So I thought this assignment would be no problem for me. I was wrong. I stood at a doctor's side (Dr. Haskell) as he performed the partial-birth abortion procedure--and what I saw is branded forever in my mind. The mother was 6 months pregnant. The baby's heartbeat was clearly visible on the ultrasound screen. The doctor went in with forceps and grabbed the legs and pulled them down into the birth canal. Then he delivered the baby's body and the arms--everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were clasping and unclasping, and his feet were kicking. then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks that he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp. I never went back to that clinic. But I am still haunted by the face of that little boy--it was the most perfect, angelic face I have ever seen." We urge our colleagues, both pro-life and pro-choice, to join us in overriding President Clinton's veto.

Argument 2:

When this issue first came before the Senate we were not yet familiar with the arguments and competing claims on the facts. The hearings that were held and the subsequent debate failed to resolve the dispute. We voted against the Partial-Birth Abortion Bill because the case in its favor had not been made. In the year since that vote, though, we have continued to learn about this procedure, and the more we have examined it the clearer it has become to us that partial-birth abortions should be illegal. We are pro-choice, but this procedure is closer to infanticide than abortion. We will therefore switch our votes, and vote to override President Clinton's veto.

Those opposing overriding the President's veto contended:

Late-term abortions are physically difficult and emotionally devastating to the women involved. These abortions are of wanted babies; women do not casually carry children through most of their pregnancies and then decide to abort them for trivial reasons. They take place under the most tragic of circumstances, when something has gone wrong. We have heard a lot of expert opinions both for and against this bill, but the significance of that testimony pales before the testimony that has been given by two women who had so-called "partial-birth" abortions. The riveting accounts of these women who courageously were willing to make their cases public brought the needed human dimension to this debate. This debate is about real women, and real families, in desperate circumstances.

One of the women who had this procedure is Coreen Costello. She is married and the mother of two children, and is a self-described pro-life Republican. When she was 7-months pregnant with her third child, she was told that her child had a lethal neurological disorder, had been unable to move for 2 months, and was not expected to live. In her words: "I considered a Caesarean section, but experts at Cedars-Sinai Hospital were adamant that the risks to my health and possibly my life were too great. There was no reason to risk leaving my children motherless if there was no hope of saving Katherine. The doctors all agreed that our only option was the intact D&E procedure. I was devastated. The thought of an abortion sent chills down my spine. I remember patting my tummy, promising my little girl that I would never let anyone hurt or devalue her. After Dr. McMahon explained the procedure to us, I was so comforted. He and his staff understood the pain and anguish we were feeling. I realized I was in the right place. This was the safest way for me to deliver. This left open the possibility of more children, it greatly lowered the risk of my death, and most important to me, it offered a peaceful, painless passing for Katherine Grace. When I was put under anesthesia, Katherine's heart stopped. She was able to pass away peacefully inside my womb, which was the most comfortable place for her to be. Even if regular birth or a Caesarean had been medically possible, my daughter would have died an agonizing death. When I awoke a few hours later, she was brought in to us. She was beautiful. She was not missing any part of her brain. She had not been stabbed in the head with scissors. She looked peaceful. My husband and I held her tight and sobbed. We stayed with her for hours, praying and singing lullabies. Giving her back was the hardest moment of my life."

The other woman who had this procedure who testified is Vicki Wilson. She and her husband were excitedly awaiting the birth of their third child when they found out at 36 weeks of pregnancy that approximately two-thirds of their baby's brain had formed outside of her skull. They were told that there was no way her daughter would survive outside of her womb, and that having a Caesarean-section would be too dangerous for Viki. In Viki's words: "The biggest question for me and my husband was not 'Is she going to die?' A higher power had already decided that for us. The question now was 'How is she going to die?' We wanted to help her leave this world as painlessly and peacefully as possible, and in a way that protected my life and health and allowed us to try again to have children. We agonized over these options, and kept praying for a miracle. After discussing our situation extensively, our doctors referred us to Dr. McMahon. It was during our drive to Los Angeles that we chose our daughter's name. We named her Abigail, the name my maternal grandmother had always wanted for a grandchild. We decided that if she were named Abigail, her great-grandma would be able to recognize her in heaven. My husband grilled Dr. McMahon with all the same questions that many

of you probably have asked about the procedure. We would never have let anything happen to our baby that was cruel, or unnecessary; and Bill as my husband, loving me, wanted to be sure it was safe for me. Dr. McMahon and this procedure were our salvation. My daughter died with dignity inside my womb. She was not stabbed in the back of the head with scissors, no one dragged her out half alive and then killed her, we would never have allowed that to happen."

When Senators consider this override attempt, and weigh the medical and legal testimony, we urge them to never lose sight of the fact that if this bill were law when Dr. McMahon helped Viki Wilson and Coreen Costello, he would have faced up to 2 years in prison. In response to this riveting testimony, supporters of this bill have said that they sympathize with these women but that they did not have partial-birth abortions because their babies died in the womb. However, we heard testimony from medical experts such as Dr. Robinson who said that the definition in the bill: "would amount to a ban on a D&E procedure entirely because the law is so vague and based on erroneous assumptions, it would leave doctors wondering if they were open to prosecution or not each time they performed a late abortion. That means that by banning this technique, you would in practice ban most later abortions altogether by making them virtually unavailable. And that means that women will probably die." Using a term like "partial-birth abortion" serves the purpose of inflaming passions against this procedure, but it is a medically inaccurate term that threatens women's health.

This bill is not about just one medical procedure, as our colleagues' claim; it is about chipping away at the right to choose. This Congress, on one measure after another, has tried to restrict the constitutional right to an abortion and has often succeeded. For instance, it has voted to take that right from poor women and prisoners by denying public funding and it has taken away that right as a health care option for Federal employees. Some of our colleagues say we are being extreme in the same way that the National Rifle Association is extreme in opposing reasonable restrictions on firearms, but we see a clear pattern in their efforts. We must draw the line everywhere, or the right to an abortion will become an empty right.

Another problem with this bill is that it is clearly unconstitutional. In 1976, the Supreme Court ruled in *Planned Parenthood v. Danforth* that a specific form of abortions (saline) could not be banned after the 12th week. Nineteen years later, Congress is considering a specific ban on another form of abortion. We have heard conflicting testimony on the constitutionality of this bill. We agree with the arguments that say the bill is unconstitutional, but we think the broader point is that the testimony at least demonstrates that this bill is constitutionally questionable.

Similarly, the medical testimony we have heard is conflicting. Some abortion providers have testified that in some cases this procedure is necessary for the life or health of the woman, and that it is also the safest procedure to be used. Other doctors have sharply disputed those claims. In our opinion, this dispute is a medical dispute that doctors should resolve among themselves without congressional interference.

Overall, we are more convinced than ever that the decision to have a late-term abortion is a highly personal one that should be left to the woman, and the safest and most appropriate forms of abortion should be determined by medical professionals, not Senators. We urge Senators not to practice medicine without a license. We urge them to defeat this bill.